IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1095 of 2005

Between:

1. The Director General of Police,

Andhra Pradesh, Hyderabad.

2. The Deputy Inspector General of Police,

Karimnagar Range,Karimnagar.

3. The Superintendent of Police, Karimnagar.

.....PETITIONERS

AND

Kesavulu, P.C. 38 (Retd),
R/o H.No. 8-7-10, Kothirampur,

Karimnagar, Karimnagar District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High court may be pleased to issue an appropriate Writ or direction, more particularly one in the nature of "Writ of Certiorari" calling for the records connected with order in O.A.No.4684 of 1994 dt. 20-8-2003 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal,

Hyderabad and quash the same as erroneous and contrary to law.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent: MR.B.SREERAMULU

The Court made the following:

ORDER: (Per Hon'ble Sri Justice G.Bikshapathy)

The writ petition is filed by the Government assailing the order dated 20-08-2003 in O.A.No.4684 of 1994 passed by the A.P. Administrative Tribunal, Hyderabad.

2. The respondent was working as Police Constable in Karimnagar District. While so, charges were framed against him by the Sub-Divisional Police Officer, Jagtial on 30.10.1986 to the following effect.

" You are a PC attached to PS Vemulawada. On 25.07.86 at about 2000 hours, you along with PC 1014 Laxmaiah, AR Karimnagar who was on special duty at Vemulawada went to the Shiva Wines, a brandy shop situated on Block Office road, Vemulawada, took three beer bottles from the shop owner M.Karunakar Rao, went to the adjacent hotel and consumed the beer, while consuming the beer you called the salesman Ramesh of the said brandy shop and asked him to get one more beer bottle at free of cost. When the salesman Ramesh refused to oblige your request, you asked him to give concession in the sale, which was also turned down by the salesman. Upon which you grew angry, broken the empty beer bottles in the hotel and went to the shop owner Karunakar and abused him in filthy language and threatened with dire consequences when he asked you as to why a scene was created in the hotel.

Again on 02.08.1986 at about 2000 hours you along with OC 1014 Laxmaiah of AR Karimnagar who was on special duty at Vemulawada went to Maharaja brandy shop, situated on cinema road, Vemulawada took to six bottles of beer and 5 kara packets, all worth Rs.80/- from the salesman Pokanla Rajender, without paying the price. When the sales man asked for the money you both threatened dire consequences and abused the owner of the said brandy shop by name Kamatala Rajeshwar Rao, in filthy language and left the place. Again on 02.08.1986 at about 1730 hours you along with PC 1239 Herucules of AR Karimnagar who was on special duty at Vemulawada, went to the Maharaja Brandy shop, asked the salesman Pokala Rajender to give three beer bottles on credit. Since you have not paid Rs.80/- towards the cost of beer and khara, took on 27.7.86 night, the salesman refused to give three beer bottles as demanded

> by you, on which you both started abusing the salesman in most filthy language by thumping on the counter and thereby created a scene at the brandy shop, which was attracted by the many passers by. Thus your conduct was most reprehensible and unbecoming of a police constable and your behavior towards the local wine shop dealers is high handed. Hence the charge."

The respondent denied the charges. Thereafter, an enquiry was conducted. Ultimately, the Enquiry Officer found the respondent guilty of the charges. The Disciplinary Authority by an order dated 30-04-1988 imposed punishment of reduction in time scale of pay by two stages for two years with effect on future increments and pension. Aggrieved by the said punishment order the respondent filed an appeal before the Appellate Authority. However, the Appellate Authority by an order dated 18.12.1992 dismissed the appeal. Therefore, he approached the Tribunal assailing the order of punishment. The learned Tribunal, however, went into the matter elaborately and found that the findings of the enquiry officer were only based on preliminary statements and therefore set aside the order of punishment by an order dated 20-08-2003. Against the said order, the Department has filed the present writ petition.

3. Learned Government Pleader submits that the procedure as adopted by the Tribunal is illegal and contrary to the ratio laid down by the Supreme Court in catena of decisions. It is now well settled that the Tribunal or the High Court acting under Article 226 of the Constitution of India is not an Appellate Authority over the order passed by the authorities and if there is any evidence on which basis finding was recorded by the Enquiry Officer the sufficiency or otherwise, of such evidence is beyond the scope of scrutiny by the Tribunal. But in the instant case the learned Government Pleader submits that the Tribunal has dealt with the matter as if the Appellate Authority and discussed the evidence available on record and came to the conclusion that the findings recorded by the Enquiry Officer are not correct and thus the very procedure adopted by the Tribunal is illegal and the same is liable to be set aside.

4. On the other hand, learned counsel for the respondent-employee submits that the writ papers have not been served on the respondent, which is contrary to the writ

rules. Secondly, he also submits that the order passed by the Tribunal is quite legal and valid. The Tribunal has considered the matter on merits and came to the conclusion that the charges cannot be held to be proved and such a finding cannot be disturbed by this Court under Article 226 of the Constitution of India. However, he submits that considerable delay nearly a decade has taken place for disposal of the case and he submits that such delays must be avoided and the cases ought to be at earliest possible time.

5. We are only inclined to consider the merits of the case but not other submissions made by the learned counsel for the respondent. As regards the charge, there is no dispute that the respondent had participated in the enquiry, 8 witnesses, were examined in the enquiry and their statements were recorded. The Enquiry Officer found the respondent guilty of the charges.

6. The question calls for consideration is whether the Tribunal can appreciate the evidence as if the Appellate Authority. The learned Government Pleader takes this Court to the appreciation of evidence by referring to the evidence tendered by P.Ws.1 to 8 and lastly the Tribunal observed as follows.

> " So, as we see in the enquiry report, the role of the applicant is not spoken to anywhere during the course of the enquiry. But contrary to the norms and rules and in violation of the evidence, the Enquiry Officer resorted to what was stated in the so called preliminary enquiry, which is obviously done behind the back of the applicant. So, that cannot be a ground to sustain the charges framed against the applicant. In view of this, the action taken by the respondents in imposing the punishment against the applicant is illegal and arbitrary."

By holding so, the order of punishment was set aside. But such an exercise on the part of Tribunal is unwarranted and unjustified. The decisions of the Supreme Court are to the effect that it is not within the domain of the Tribunal to re-appreciate the evidence and come to different conclusion nor it is open to the Tribunal to observe that sufficient evidence was not available to come to such a conclusion. If any material is available by which the Enquiry Officer comes to the conclusion in accordance with the procedure laid down by the Rules, the Tribunal ought to keep away from further scrutiny of the matter. But in the instant case as we find the

Tribunal has dealt with as if it was the Appellate Authority. Under those circumstances, we find the order is not sustainable in law and requires re-consideration.

7. Accordingly, the impugned order is set aside and the O.A. is remitted back to the Tribunal for fresh consideration. The Tribunal shall hear the parties concern and pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

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G.BIKSHAPATHY,J.

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P.S.NARAYANA,J.

Date: 15th March 2005.

BSB

Note:

Issue C.C. by one week.

// B.O. //

BSB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, he Chief Justice on this Tuesday the Fifteenth day of March Two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Director General of Police,

Andhra Pradesh, Hyderabad.

2. The Deputy Inspector General of Police,

Karimnagar Range, Karimnagar.

3. The Superintendent of Police, Karimnagar.

4. Two CCs to the Government Pleader for Services-I, High Court

of Andhra Pradesh, Hyderabad (OUT).

5. Two CD copies

*Form-NIC-OGS/WP{**AVLR**}*